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## Trade Union Abuses

Copal Mintz

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## TRADE UNION ABUSES

**T**RADER unionism, in its proper scope and operation, is a technique for the increase of the worker's share of produced wealth and for the improvement of his working conditions and relations, and in its more progressive state, for the promotion and safeguarding of the worker's welfare by provision for non-employment and illness and by cooperative enterprises. The bases of the technique are organization and the utilization of the power of concert of action; in its early stages the concerted action is strike, in the more developed status it is collective bargaining, supported by the threat or fear of strike as the coercive force.

Success in the employment of the technique results in agreements between the union, on the one hand, and the employers, individually or acting through associations, on the other. These agreements fix the rates of pay, prescribe the hours and conditions of labor, bind the employer to employ only members of the union, limit his right to hire and discharge them at will; provide against strike, on the one hand, and lockout, on the other, during the term of the contract and the other party's performance thereof, and contain such other conditions of mutual concern as the parties agree upon.<sup>1</sup> Not infrequently, provision is made for impartial boards or chairmen to supervise the operation and performance of the contract and to adjust disputes.<sup>2</sup> In the matter of hiring and discharge, in those industries in which the unions are most firmly established, the union has *ex parte* control of the filling of the positions; that is, it assigns its members to the various positions and dictates their tenure.

Obviously, success in the employment of the technique vests in the officials of the union extensive power, not only with respect to the employers but more so over their own

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<sup>1</sup> See, for example, *Jacobs v. Cohen*, 183 N. Y. 207, 215-218, 76 N. E. 5, 8-10 (1905); *Nann v. Raimist*, 255 N. Y. 307, 310, 174 N. E. 690, 691, 73 A. L. R. 669 (1931); *Schlesinger v. Quinto*, 201 App. Div. 487, 194 N. Y. Supp. 401 (1st Dept. 1922); *Maisel v. Sigman*, 123 Misc. 714, 724-726, 205 N. Y. Supp. 807, 815-817 (1924).

<sup>2</sup> See, for example, *Schlesinger v. Quinto*, *supra* note 1.

members. The greater the success, the greater the power; and, like all other power, it operates for good when exercised by men of wisdom and conscience, and for evil when wielded by the predatory or corrupt.

In so far as the power might be abused to the prejudice of the employers, there are strong counter-balancing forces. Employers, particularly when combined in associations, are a class well equipped to take care of themselves and of their interests. Economically, their power is certainly never subordinate to that of the union, and equally the law affords them a measure of protection.<sup>3</sup> Strategically they are the ones with whom the union officials must come to, deal with, and stay on good terms.

Quite different is the situation with respect to intra-union abuse of power. There it is a case of potent power versus humble individual. This paper proposes to consider what, if any, checks and balances there are on this power, and what, if any, legal reforms should be brought about, and questions cognate thereto.

At the very outset, it is perhaps pertinent to point out that the problem here considered arises not until, and only where, trade unionism attains its objective to a comparatively high degree. The problem does not arise except where trade unionism is successful for two reasons: (1) while trade unionism is struggling first for organization and then to establish its power with the employers, there is neither time, opportunity nor incentive for inner exploitation, and (2) the leadership at that stage is in persons of more or less idealistic and missionary bent. It is only when power is established and substantial treasuries are in existence that "racketeers" deem it worth while to enter upon the scene. Obviously, the problem is more and more acute in proportion to the extent of success. If the line of progress lies in the extension of the trade union system, the problem here considered must be solved. Otherwise, the lot of the individual worker, in many respects, will be even more intolerable than in pre-union times. Furthermore, the evils

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<sup>3</sup> See *Steinkritz Amusement Corp. v. Kaplan*, 257 N. Y. 294, 178 N. E. 11 (1931).

which will hereafter be pointed out are a great obstacle to the development of the trade union system, and if not eradicated might lead to its collapse.

## I.

### ADMISSION TO MEMBERSHIP.

The problem begins in the matter of admission to membership in the unions. Where a trade is completely unionized, membership in the union is a condition precedent to one's practice of that trade. The union, therefore, determines how many, and who, should take up that vocation. If it were proposed, for example, that the legal profession or the medical profession be afforded the right to keep persons out of the profession on a ground other than lack of qualification, it is quite certain that such a proposal would meet with determined and almost universal condemnation. Yet in the trades, in which trade unionism is successful, precisely that power resides in the unions and, in some instances, is exercised by them.<sup>4</sup>

I am not arguing against the economic need or wisdom of exclusion in order to prevent an unabsorbable oversupply. Such oversupplies, like overproduction, are grave and difficult problems which, if solvable at all, call for the application of genius. One need not be unsympathetic or facetious to doubt that all successful trade unions are guided by extraordinary personalities. At best, it is extremely doubtful whether those who are already in, properly and safely, may be entrusted with the power to determine how many and who shall share in their monopolistic prerogatives. When it is realized that to leave the matter to the "ins" is in reality to leave it to the individual, or small group of individuals, who controls the organization of the

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<sup>4</sup> Of course, in the absence of statute the courts have no authority to compel a union or other association, corporate or voluntary, to admit an applicant to membership, whatever be the injustice or hardship of exclusion. See *McKane v. Adams*, 123 N. Y. 609, 25 N. E. 1057 (1890); *Greenwood v. Building Trades Council*, 71 Cal. App. 159, 233 Pac. 823 (1925); *Mayer v. Journeymen Stonecutters' Association*, 47 N. J. Eq. 519, 524, 20 Atl. 492, 494 (1890); *Muller v. Bricklayers' M. & P. Union*, 6 N. J. Misc. Rep. 226, 140 Atl. 424 (1928).

"ins," the peril becomes manifest. There is no safeguard in such a situation against short-sighted selfishness, assuming the honesty and good will of the persons in control. And since there is no reason for expecting impeccable integrity on the part of all labor leaders any more than in any other activity of mankind, we must not overlook the opportunities for corruption that such situations present.

Perhaps it would be unwise to eliminate the power. In the absence of a general scheme for the solution of the problem of oversupply, it may be unwise to prevent unions from exercising some substantial measure of control in that direction as far as their own several trades may be concerned, however haphazard and crude and unrelated to the general economic welfare such control is. But an unprincipled monopoly in that respect is intolerable. While the complete barring of new members from unions has a measure of economic justification, provided no favoritism or discrimination is exercised, the same cannot be said of other practices.

There are unions which exact very substantial initiation fees. The payment of \$500 or \$1,000 or even \$2,000 may be a perfectly fair and proper exaction as an entry fee to a golf or country club, but has no place in a union. That is the last organization which should impose a property qualification as a condition to membership. If overcrowding of the trade is to be prevented, it should be done on a rational basis and not by a prohibitory monetary levy.

In several unions of which the writer knows, still another travesty is practiced. While some newcomers are admitted to membership, by far the greater number are in lieu of membership given "permits" which entitle them to work as union men in unionized shops. For the *permit*, and the job he gets by reason of it, the holder of the permit is required to pay a substantial portion of his earnings into the treasury of the union—in some unions 10% of his earnings besides other assessments—but he has no right to attend meetings and has no vote. The *permit* system obviously does not avoid an oversupply of workers, and, therefore, lacks the only economic justification for closing membership rolls. It simply serves to exact from certain of the workers prohibitory levies and to impose upon them a status of sub-

servience in that they are dependent for their jobs on the favor and grace of the union officials who granted and who may withdraw the *permits*.

A variant of the *permit* system is *junior* membership. The *juniors* are as fully qualified for their vocation as the *seniors* and fill the same jobs for the same pay, except that they are entitled to jobs only after all the *seniors* are placed; but they have no vote, may not even attend meetings, hold no office, are ruled by the *seniors*, pay 10% of their earnings as dues after an initiation fee of \$500, and have no interest in the union property.

The existence of such classes of unfranchised, underprivileged and overtaxed workers as an appendage to a union is contrary to all principles of democracy and considerations of expediency. It mocks the preachings of, and exhortations to, "brotherhood" and workers' solidarity.

Such arrangements are prolific of evil under the best of circumstances. And if perchance the officials in charge be unscrupulous, what system could be more ideal for corruption?

## II.

### FINES, SUSPENSIONS AND EXPULSIONS.

Closely related to the question of admission to membership is the one of discipline of members—their fining, suspension and expulsion.

Unions are either voluntary associations or corporations. In either case they have the right to formulate their own constitutions and by-laws, or other fundamental law. Such fundamental law, as amended from time to time in accordance with the provision for amendment therein contained, is held to be a contract between the individual member and his associates.<sup>5</sup> Included in the member's contract

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<sup>5</sup> *Polin v. Kaplan*, 257 N. Y. 277, 177 N. E. 833 (1931); (1931) 6 ST. JOHN'S L. REV. 143, cases cited in note 1, to wit: *Strauss v. Thoman*, 60 Misc. 72, 111 N. Y. Supp. 745, *aff'd*, 129 App. Div. 905, 113 N. Y. Supp. 1148 (1st Dept. 1908); *Ranken v. Probey*, 131 App. Div. 328, 115 N. Y. Supp. 832 (3rd Dept. 1909); *Grassi Bros. v. O'Rourke*, 89 Misc. 234, 153 N. Y. Supp. 493

is also the obligation of "loyal support of the society in the attainment of its proper purposes."<sup>6</sup>

The constitution and by-laws of unions commonly contain specific prohibitions and prescribe penalties for transgressions thereof. Such prohibitions forbid: disorderly conduct at meetings; being employed with non-members; procuring or continuing employment other than in the prescribed manner and upon the prescribed terms; breach of a strike; "giving aid and comfort to the enemy"; and such other acts as experience has demonstrated, or theory believes, to be harmful.

In so far as such regulations apply to conduct which subverts the fundamental aims of the association, it is clear that the association should have the power to act so as to effectively restrain and deter such offenses by members. The only concern of public policy in that respect is that proper care be taken by the association in the ascertainment of the facts so that no innocent member should suffer by a mistaken or wrongful accusation and that the discipline administered be not unnecessarily harsh. The power is far-reaching; its exercise to the extreme of expulsion may exclude the individual involved from his calling, which is usually his only means of earning a livelihood, and thus may consign him to years of idleness and his family to starvation. Suspension for substantial periods works similar hardship. In the face of such grave consequences, it is imperative that there be great care, caution and tolerance in the exercise of the disciplinary power.

Union laws, however, frequently go beyond prescribing specific acts of obvious detriment. In many instances they contain a general provision empowering the organization, or a tribunal within it, to impose such discipline as it shall see fit for any conduct which it may deem injurious or detrimental to the interests of the organization.<sup>7</sup> Some

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(1915). Also *In re Haebler v. N. Y. Produce Exchange*, 149 N. Y. 414, 427, 44 N. E. 87, 91 (1896); *Dingwall v. Amalgamated Ass'n*, 4 Cal. App. 565, 88 Pac. 597 (1906).

<sup>6</sup> *Polin v. Kaplan*, *supra* note 5, and cases therein cited. See also *Brennan v. United Hatters*, 73 N. J. L. 729, 65 Atl. 165 (1906).

<sup>7</sup> See, for example, *Havens v. King*, 221 App. Div. 475, 224 N. Y. Supp. 193 (3rd Dept. 1927), *aff'd*, 250 N. Y. 617, 166 N. E. 346 (1929), where the union's constitution authorized punishment of members "for misconduct and

unions have or claim to have, anti *lese-majeste* statutes, provisions against statements which defame or adversely reflect upon the officers, irrespective of the motive or truth of the attacks.<sup>8</sup> Other provisions prohibit, or are claimed to prohibit, resort to the courts of the land in matters affecting the union or its officers or fellow-members.<sup>9</sup> Still other provisions are claimed to prohibit the voicing of individual views contrary to the stand officially taken by the union, even where such views are stated in testimony given under oath in response to a subpoena<sup>10</sup> or in a petition to the legislature.<sup>11</sup> In short, some unions attempt to coerce their members into a slavish conformity, in words and demeanor no less than in their acts, such as has been attempted only by the church in the days of its darkest bigotry, and by political depotisms in their days of worst tyranny.

Granted that the degree of individual liberty that should be permitted in such a collective movement as a trade union is not capable of dogmatic definition, sight must not be lost

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violation of obligation" and also expulsion for "violating any of the duties of membership, or any of the principles of the Brotherhood."

The Moving Picture Operators' Union of Greater New York, Local No. 306 of I. A. of T. S. E. and M. P. M. O. of the U. S. and Canada, on May 20, 1931, adopted an amendment to its constitution reading as follows:

"Any member guilty of conduct detrimental, prejudicial or injurious to the best interests of this Union and/or unbecoming a member of this Union and/or tending to disrupt or disturb the harmony within the organization, between its members or its officers, shall, if found guilty by the Executive Board after trial as provided in Section One of this Article, be punishable by fine or by suspension, or both, or by expulsion or by such other penalties as the members of the Union at a regular meeting duly convened may deem fit and proper to impose."

See *Lateltin v. Kaplan*, pending in Supreme Court, New York County; *Tyborowski v. Kaplan*, pending in Supreme Court, Kings County. See also *People ex rel. Holstrom v. Independent Dock Builders' Benevolent Union*, 164 App. Div. 267, 149 N. Y. Supp. 771 (1st Dept. 1914), where a by-law provided that a member "Where act or acts are detrimental to the welfare of the Organization, whether direct or against an officer or member \* \* \* shall be subject to forfeiture of his \* \* \* membership, or any action the body may see fit to take, after a fair trial before the Executive Board or the body in session."

<sup>8</sup> In *Polin v. Kaplan*, *supra* note 5, it was claimed that there was a "minute by-law" reading: "Any man or set of men convicted for sending out or distributing slanderous literature will be fined \$500, or expulsion." See also *Wilcox v. Royal Arcanum*, 210 N. Y. 370, 104 N. E. 624 (1914).

<sup>9</sup> See *Burke v. Monumental Division*, 273 Fed. 707 (D. C. Md. 1919); *Polin v. Kaplan*, *supra* note 5.

<sup>10</sup> See *Abdon v. Wallace*, 165 N. E. 68 (Ind. App. 1929).

<sup>11</sup> See *Spayd v. Ringing Rock Lodge*, 270 Pa. 67, 113 Atl. 70 (1921).



of the fact that the inspiration and essence of the movement is promotion of individual weal, and, therefore, the greatest possible tolerance should prevail. Of course, disloyalty in matters fundamental cannot be brooked, but beyond that, there should be free reign to individuality and independence, except as that may be restrained by the harmonizing force of moral leadership.

If all labor unions were under the guidance of wise and benign men it would not matter how broad and indefinite were the disciplinary laws. But, as has already been observed above, not unlike other institutions of mankind, unions, generally, are controlled by the usual run of ordinary mortals. Such mortals are subject to the usual passions, vanities and other frailties of men. They dislike having their acts and policies criticized or opposed, and may be so angered by a constant critic as to desire his elimination. They, at times, may be so antagonized by the word, deed or attitude of a member as to arouse a determination to get rid of him. Some of them are naturally of overbearing dispositions. Some become imbued with a military spirit and come to regard themselves as generals at the head of armies, which require that for the "good of the service" there be complete unanimity and unquestioned accord with them on the part of all the members. Still others, for a variety of reasons (whether it be love of power or material gain, open or illicit), like to become entrenched in their offices and believe absolutism the best assurance of the perpetuation of their power and emoluments.

It is to be expected, then, that great latitude in the power to fine, suspend and expel should result in serious abuses. Illustrations are quite enlightening.

In one union in the City of New York, composed of some 1,200 men, in the period between October, 1929 and October, 1931, at least twelve members were expelled or suspended and fined. The cases of ten of them reached the courts, and, therefore, can be accurately set forth. Six <sup>12</sup>

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<sup>12</sup> See *Polin v. Kaplan*, *supra* note 5; *Schneider v. Kaplan*, *ibid.*; *Rubin and Lanzette v. Kaplan*, *Smith v. Kaplan*, and *Wood v. Kaplan*, all in Supreme Court, Kings County. All these expulsions and fines have been held void and were set aside.

of the ten were expelled and fined \$1,000 each, practically at one time, simply because they had (1) cooperated in the bringing of actions in the Supreme Court against the officers of the union accusing them of wrongdoing against the union and its members and, among other things, seeking to compel them to account for the hundreds of thousands of dollars of union funds which had passed through their hands, and (2) in connection with the actions had circularized their fellow-members, explaining their action and their reasons therefor, denouncing the officers, and appealing for cooperation. In the action for an accounting,<sup>13</sup> the plaintiff alleged that the funds of the union had not been handled by the persons and in the manner prescribed by the constitution of the organization, and further that reports and accountings required by the constitution had not been rendered; and these allegations were not denied. The court, in that case, ordered a discovery and inspection of the books and records of the officers. The officers filed an appeal from this order,<sup>14</sup> and then brought on the above mentioned charges against the plaintiff and his associates. Under the constitution of the union, the charges, being held "cognizable" at a meeting of the members, were referred to the executive board for trial and report. The executive board, in these instances, was composed exclusively of the offended officials, all of whom were defendants in the court actions which had been commenced by the accused members and were the persons criticized in the "libelous" circulars. The executive board determined and reported that the commencement of the actions and the literature sent out in connection therewith constituted violations of provisions of the constitution and of the "oath of obligation" which each had taken upon his admission to membership. At meetings of the union, the reports of the executive board were concurred in. At first some of the accused were fined, in one instance, the fines aggregated \$5,000 (an outrageous sum considering the fact that it was imposed on an un-

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<sup>13</sup> *Ruddock* (later substituted by *Polin*, later substituted by *Thide*) v. *Kaplan*, pending in Supreme Court, Queens County.

<sup>14</sup> *Polin v. Kaplan*, 230 App. Div. 784, 244 N. Y. Supp. 912 (2d Dept. 1930).

propertied wage earner), some were suspended and others were fined and suspended. But reconsiderations were had in each case "upon advice of counsel" and the uniform penalty that was finally imposed on each was a fine of \$1,000 and expulsion.

It is to be noted that no claim was made in the charges against any of these men, and that the court actions were groundless or predicated upon false allegations, or motivated by malice or ulterior purposes. The claim simply was that the members had no right to bring the matter into court in any event, whatever were the merits or provocations, and that if wrongs had been committed by the officers, the members' sole remedy was impeachment proceedings within the union.

The accounting action reached a point where, the order of discovery and inspection having been affirmed,<sup>15</sup> in order to stave off the discovery and inspection, the officers of the union took the position that the expulsion of the plaintiff in the action brought about an abatement or suspension of the suit. In an effort to avoid litigation of that point, two other members, theretofore not associated with the litigation, came forward with an offer to be substituted as plaintiffs in the accounting action. One of these thereafter did become the substituted plaintiff. Charges were then preferred against each of these two men. Against one of them the charge was that his mere offer to become the plaintiff in an action against its officers was a violation of the union's constitution.<sup>16</sup> The charge against the other was that he had violated the union's constitution by becoming the substituted plaintiff.<sup>17</sup> These charges also were tried by the executive board who reported that the members were guilty as charged. Votes followed suspending each of the accused for six months.

In the same union, there was an exchange of blows between a member and two other members at the union head-

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<sup>15</sup> *Ibid.*

<sup>16</sup> See *Gruber v. Kaplan*, pending in Supreme Court, New York County (injunction *pendente lite* granted).

<sup>17</sup> See *Thide v. Kaplan*, pending in Supreme Court, New York County (injunction *pendente lite* granted).

quarters. The former claimed that the latter two were the aggressors and had assaulted him without any just cause or provocation. He procured from the Magistrate's Court summonses directed to his two alleged assailants, and upon the return of the summonses testified before the Magistrate to the assaults which he claimed had been committed by the other two. The Magistrate dismissed the assault charges. Thereupon one of the officers of the union preferred charges against the complainant accusing him of "conduct detrimental, prejudicial and injurious" to the best interests of the union, "and with conduct unbecoming a member thereof" in that he had caused the issuance of the Magistrate's Court summonses and testified to the alleged assaults, and in that his testimony before the Magistrate was "false and untrue and without any basis in fact," and in that if the facts to which he had testified were true, "charges" could have been brought against the alleged assailants "within the union, pursuant to the provisions of the constitution and by-laws." These charges were held "cognizable" and referred to the executive board, who, in turn, reported that the member was guilty as charged. On that, the member was expelled from the union.<sup>18</sup>

Another member of the union was a participant in another physical encounter with two others at the meeting place of the union prior to the commencement of a meeting. This member also procured a summons from the Magistrate's Court, charging one of the other two with assault upon him, and upon the return of the summons testified that he had been assaulted by the defendant named in the summons. In this case also, the Magistrate dismissed the charge. Thereafter, one of the officers of the union preferred charges against the member substantially in the same form as those outlined in the last paragraph except for the addition of an allegation that the member was the assailant, and that the assault itself as well as the subsequent court proceeding was detrimental, prejudicial and injurious to the best interests of the union, and "unbecoming a member thereof."

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<sup>18</sup> See *Lateltin v. Kaplan*, pending in Supreme Court, New York County (injunction *pendente lite* granted).

These charges took the course of those previously discussed, and resulted in expulsion.<sup>19</sup>

In another union, four men were recently expelled for no graver offense than that they, being junior members and as such without franchise and barred from all participation in the conduct of the union, met together with the other juniors and decided to petition and agitate within the union for the equality of the rights of all members, and thereafter presented such a petition to the union and upon denial thereof attempted to appeal to the parent body.<sup>20</sup>

Some twenty-seven years ago, the Erie Railroad, in the exercise of a right reserved to it under its contract with its engineers' union, ordered the engineers to run the Jersey City-Port Jervis trains on to Susquehanna. The carrying out of the order would greatly inconvenience the engineers, and so at a meeting of their union they adopted a resolution of protest. The superintendent of the railroad, nevertheless, insisted upon the extension of the run and appealed to the engineers to carry out their orders. Under these circumstances, one of the engineers, Fritz, although he had voted for the resolution of protest and was personally opposed to the extension of the run, promised the superintendent that he would do the best he could. Thereafter Fritz argued with his fellow-members that the railroad company was within its rights under the contract and that the members were bound to comply with the company's orders in the matter. He repeated this contention in a letter to one of the superior officers of the Order. For this conduct, charges were preferred against Fritz of violation of obligation in that he had offered his advice and service to the officials in their proposed plan to run trains through from Jersey City to Susquehanna "both before and after the protest of this division against this plan was entered." On this charge, Fritz, although he had been a member of the

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<sup>19</sup> See *Tyborowski v. Kaplan*, pending in Supreme Court, Kings County (injunction *pendente lite* granted).

<sup>20</sup> See *Dulberger et al. v. International Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the U. S. and Canada, Local 384*, Hudson County, N. J., pending in Court of Chancery of New Jersey.

union for over twenty years and had been chief of his local, was expelled.<sup>21</sup>

Some sixteen years ago, there was pending before the Interstate Commerce Commission an investigation of the advisability of adopting a particular type of headlight. One of the railroads directed one of its engineers, Rother, to go to Washington. Upon his arrival there, he was served with a subpoena to appear before the Interstate Commerce Commission. The Brotherhood of Locomotive Engineers and its Grand Chief Engineer, Warren S. Stone, were favoring the adoption of the headlight. Nevertheless, Rother, answering questions put to him at the hearing, truthfully testified to certain disadvantages inherent in the proposed headlight

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<sup>21</sup> *Fritz v. Knaub*, 57 Misc. 405, 103 N. Y. Supp. 1003 (Sup. Ct., Orange Co., 1907), *aff'd*, 124 App. Div. 915, 108 N. Y. Supp. 1133 (2d Dept. 1908), on opinion of Mr. Justice Mills at Special Term. In the course of its opinion, the court at Special Term said the following:

"I fail to see how such contention (the contention on the part of the plaintiff that under the agreement between the company and the engineers, the company had the right to adopt the proposed plan and require the engineers to run through to Susquehanna) could be regarded as violating any of the rules of the Division or as being in any way disloyal to his fellow members \* \* \*. There is nothing in the evidence to show that the resolution of the Division to protest against the proposed new plan was based upon any contention that the company, under such an agreement, had not the right to adopt it. The plaintiff, himself, voted in the Division meeting for such protest, presumably upon the obvious ground of the great hardship of the new plan to the engineers" (p. 414, 103 N. Y. Supp. at 1009).

"In the whole case I can see no substantial fault in the conduct of the plaintiff—nothing of which his fellow members ought to complain. The gist of his offending seems to have been merely that he took the view that it was the duty of the engineers to obey the order of the railroad officials, if given, to run through to Susquehanna, he taking this view upon the ground that the contract between the company and the engineers gave the company the right to give such order. Whether or not this view of the effect of the contract be correct is still an open question, as no tribunal in or out of the order has held to the contrary. Until such a decision has been rendered, it would seem manifest that every member of the order ought to be at liberty to hold and among his fellows freely express his own opinion upon the question. Any rule prohibiting this would seem unreasonable and despotic.

"The expulsion from such an order of a member \* \* \* is a very serious matter and should not be had except for substantial cause" (p. 416, 103 N. Y. Supp. at 1010).

The by-law relied on to justify the expulsion read: "Any member who, by verbal or written communication to railroad officials or others, interferes with a grievance that is in the hands of a committee, or at any other time makes any suggestion to any official that may cause discord in any division, shall be expelled when proved guilty." This seems to be a standard by-law in railroad engineers' unions. See *Burke v. Monumental Division*, *supra* note 9.

as observed by him in the use of it. The Grand Chief Engineer was very much displeased with Rother's testimony and directed the chief engineer of Rother's local to prefer charges against him, that in testifying as he did, contrary to the wishes of the Brotherhood, he violated the law of the organization which provided that any member who wrote or spoke to the injury or detriment or in interference of "national legislative matters, offered by our legislative representative at Washington or Mexico" should be expelled. While the charges were pending before the local, the Grand Chief Engineer let it be known that he wanted Rother's expulsion from the union and in the event the local failed to expel him, he would suspend its charter. Nevertheless, the local found Rother not guilty. Thereupon the Grand Chief Engineer ordered the suspension of the local.<sup>22</sup>

In another case, the Grand International Brotherhood of Engineers expelled a member out of resentment of the fact that when the strike of the railway brotherhoods was being discussed just prior to the declaration of a state of war between the United States and Germany "he (the member) declared his first allegiance to his country."<sup>23</sup>

In New Orleans, some twenty-nine years ago, two members (Schneider and Schekler) of that city's local of the United Association of Journeymen Plumbers, Gasfitters, Steamfitters and Steamfitters' Helpers of the United States and Canada, were on the New Orleans Board of Examiners of Plumbers, a branch of the Municipal Government, composed of seven members. One of the board's functions was to appoint one or more inspectors. While the matter of appointing an inspector was pending before the Board of Examiners, the union passed a resolution providing that Schneider and Schekler be fined \$25 "if they did not vote

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<sup>22</sup> *Abdon v. Wallace*, *supra* note 10. The court characterized the Grand Chief Engineer's conduct as "reprehensible in the extreme" and "out of keeping with the principles of common honesty." "Who is this man Stone that he should presume to instruct a witness as to what his testimony should be before a governmental commission and to penalize him for testifying to the truth \* \* \* ?" (at p. 75).

<sup>23</sup> *Grand International Brotherhood of Locomotive Engineers v. Green*, 210 Ala. 496, 98 So. 569 (1923). The court held, "Under no law of the brotherhood or of the land was this a just or sufficient ground for his expulsion" (at 499, So. at 572).

for brother William McGilvray as inspector of plumbing for the City of New Orleans. Any other member outside of McGilvray taking the position of plumbing inspector be fined same as two members of plumbing board. Any member taking position of plumbing inspector be expelled from local." Schneider and Schekler nevertheless voted for others than McGilvray for inspector. The union thereafter enforced its resolution not only against Schneider and Schekler but adopted resolutions fining also members working for employers who employed Schneider and Schekler and thereby forced the employers of the latter to discharge them.<sup>24</sup>

In 1919, the president, first vice-president and secretary of the Bricklayers, Plasterers & Stonemasons' Union of America, acting as the executive board of the union, removed from office the president, who was also business agent, of local 39, and then suspended him and five other members from membership for a period of fifteen months, organized a new local and transferred thereto all the property of the local and directed all the members of local 39 to become members of the new local. Those who refused, over 105 persons, were likewise suspended by the executive board. All this occurred because the president of local 39 was claimed to have committed a "contempt of the executive board." All the suspensions were without charges and without hearings.<sup>25</sup>

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<sup>24</sup> *Schneider v. Local Union No. 60*, 116 La. 270, 40 So. 700, 704 (1905). In this case the court said that union regulations and action are binding on a member "only in so far" as they are "lawful means" for the attainment of its lawful purposes. "When the union attempts the accomplishment of an object which is foreign to those purposes, or attempts the accomplishment of those purposes by unlawful means," the member may properly say: "I entered into no such contract" \* \* \* "the introduction of a resolution which is violative of the fundamental law of the land has no better foundation and its passage no greater effect" (p. 281).

"If, therefore, the appointment of McGilvray, rather than of some other and perhaps more competent man, to the position of inspector, could be considered as furthering the purposes for which the defendant herein was established, nevertheless the attempt to secure that appointment, by threatening and imposing fines and suspension, in their capacity as members of the union upon public officials charged with such appointment, was a violation of law; and this, whether those officials, as members of the union, had committed themselves to McGilvray's candidacy or not" (p. 282).

<sup>25</sup> *Bricklayers P. & S. Union v. Bowen*, 183 N. Y. Supp. 855 (Sup. Ct. Monroe Co. 1920), *aff'd*, 198 App. Div. 967, 189 N. Y. Supp. 938 (4th Dept.



Some seven years ago, several members of Local Union 585 of the United Brotherhood of Carpenters and Joiners of America filed, at a meeting of their union, charges of misconduct against the president and other officers. The president forbade the reading of the charges, threatened retaliation and immediately thereafter caused to be filed against the members charges based on general provisions of the by-laws and constitution prohibiting injury to the reputation of a fellow-member, conduct prejudicial to harmony, or slander of an officer. The officers then caused the trial of the charges against the members to be removed from the local to the District Council, and that trial resulted in suspensions for a year and fines of \$50.<sup>26</sup>

The foregoing cases <sup>27</sup> illustrate that the "brotherhood" which unites members of a union is not so tolerant and benign as to obviate legal protection and regulation of a member's right of membership. If the principle of mutual aid governed at all times the inter-relations of members of a union there would be no occasion for the interposition of the law; but such an idealistic state is not to be expected of man as evolved to date. Therefore, we must turn to a consideration of the law governing the premises.

There seems to be no statutory regulation. After the courts had ceased to regard unions as unlawful combina-

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1921). The court held that summary removal or suspension without charges or hearing was void, and as to the ground of the charge it commented (p. 860):

"It may be said, in passing, that no such offense as implied contempt of the executive officers or board is within the purview of the governing laws of the union."

<sup>26</sup> *Jose v. Savage*, 123 Misc. 283, 205 N. Y. Supp. 6 (Sup. Ct. N. Y. Co. 1924), *Proskauer, J.* "The procedure of these defendants was tyrannical and sinister. Instead of meeting the charges against themselves, they tried to destroy these plaintiffs for their temerity in making the charges. Equities most persuasive in plaintiff's favor, therefore, prompt the court to find a legal ground upon which to give redress" (at 284, 205 N. Y. Supp. at 7). And the court did find legal ground.

<sup>27</sup> The current press reports similar occurrences. For example, the *N. Y. Times*, Feb. 19, 1932, at 2, refers to the suspension and fining of fourteen members of Local 3 of the International Brotherhood of Electrical Workers in retaliation for their commencement and prosecution of a court action for an accounting, etc. See, concerning the same matter, *N. Y. Times*, March 17, 1932 at 2. See also *N. Y. Times*, March 24, 1932, at 15, reporting trial of an injunction suit by suspended members against the International Union of Operating Engineers, and also the pendency of a suit for an accounting.

tions,<sup>28</sup> they recognized a property right in membership

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<sup>28</sup> *Froelich v. Musicians Mutual Benefit Association*, 93 Mo. App. 383 (1902); *Mayer v. Journeymen Stonecutters' Association*, *supra* note 4.

The history of the statutes in England against the freedom of labor and the right of workmen to combine is set forth by Chief Justice Parker in the course of his opinion in *National Protective Association v. Cumming*, 170 N. Y. 315, 332-333, 63 N. E. 369, 373-374 (1902):

"The Statutes (for there are two) of Labourers, passed in 1349 and 1350 (23 Edw. III, and 25 Edw. III, st. 1) provided: 'that every man and woman of what condition he be, free or bond, able in body, and within the age of three score years,' and not having means of his own, 'if he in convenient service (his estate considered) be required to serve, he shall be bounden to serve him which so shall him require.' And the statutes provide that in case of refusal to serve, punishment by imprisonment might be inflicted, and that the laborer should take the customary rate of wages and no more. These statutes not only regulated the wages of laborers and mechanics, but they confined them to their existing places of residence and required them to swear to obey the provisions of the statutes. Sir James Fitzjames Stephen, in his *History of the Criminal Law of England* (Vol. III, p. 204), says, 'the main object of these statutes was to check the rise in wages consequent upon the great pestilence called the black death.'

"Nearly 200 years later, and in 1548, a more general statute was passed which forbade all conspiracies and covenants of artificers, workmen or laborers, 'not to make or do their work but at a certain price or rate,' or for other similar purposes, under the penalty, on a third conviction, of the pillory and loss of an ear, and to 'be taken as a man "infamous"' (2 & 3 Edw. VI, c. 15).

"Fourteen years later the prior statutes were to some extent amended and consolidated into a longer act, entitled 'An Act containing divers orders for artificers, laborers, servants of husbandry, and apprentices.' It provided, in effect, that all persons able to work as laborers or artificers and not possessed of independent means or other employments, are bound to work as artificers or laborers on demand. The hours of work are fixed; power is given to the justices in their next session after Easter to fix the wages to be paid to mechanics and laborers; elaborate rules are laid down as to apprenticeship, and it further provides that for the future no one is to 'set up, occupy, use or exercise any craft, mystery or occupation now used' until he has served an apprenticeship of seven years (5 Eliz. c. 4). This statute remained in force practically for a long period of time and was not formally repealed until the year 1875.

"In the year 1720 an act was passed declaring all agreements between journeymen tailors 'for advancing their wages, or for lessening their usual hours of work' to be null and void, and subjecting persons entering into such an agreement to imprisonment with or without hard labor for two months (7 Geo. I, st. 1, c. 13). Similar enactments were passed as to employees in other manufactures and trades.

"The act of 1800 (40 Geo. III, c. 60) provided for a penalty of three months imprisonment without hard labor or two months with hard labor for every journeyman, workman or other person who 'enters into any combination to obtain an advance of wages, or lessen or alter the hours of work \* \* \* or who hinders any employer from employing any person as he thinks proper, or who being hired refuses without any just or reasonable cause to work with any other journeyman or workman employed or hired to work.' The same penalty is inflicted upon persons who attend meetings held for the purpose of collecting money to further

which was entitled to protection. But, in that respect, no

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such effort, and the act also makes it an offense to assist in maintaining men who are on strike. This statute, as well as the others referred to, have at last been swept away, but necessarily their influence has been not inconsiderable in shaping the decisions of the courts of England."

In New York, while the right of workmen to organize into associations seems to have been always recognized, until comparatively recently, activities and contracts by such associations to the detriment of workmen who were not members were held unlawful.

Thus, in *Curran v. Galen*, 152 N. Y. 33, 37, 46 N. E. 297, 298, 299 (1897), a contract between an association of brewers with a union of brewery workmen whereby the employers agreed to employ only members of the union was condemned as unlawful.

But five years later, in *National Protective Association v. Cumming*, *supra*, the majority of the court practically, although not in terms, repudiated that doctrine and held that a labor union had the right to coerce, by strike or threat of strike, employers to discharge non-members and employ members in their stead. Chief Justice Parker, with the concurrence of two of his associates, said that it was lawful for unions to strive "to put their men in the place of certain men at work who were non-members working for smaller pay" and they "set about" to accomplish that purpose "in a perfectly lawful way." In that connection, they were "clearly within their rights" to determine "that if it were necessary they would bear the burden and expense of a strike to accomplish that result," and it was equally lawful for them before striking "to inform the contractors of their determination and the reason for it," that course being "right and proper and reasonable." Judge Gray, in the same case, upheld the legality of the union's activity in the following words:

"Briefly stated, my view is that the respondents had the legal right to accomplish their object by all methods not condemned by the law. That object was to secure the employment of the members of their own association, in preference to, and to the exclusion of, those of the appellant association. They infringed upon no law in declaring to the employers of members of the appellant organization that they refused to work with them; or that they would abandon their work unless the others were discharged; or in preventing the members of the appellant association from being employed as steam fitters \* \* \*. Regarded \* \* \* as a mere struggle for exclusive preference of employment, on their own terms and conditions, \* \* \* how can it be said to be within the condemnation of the law, or of any statute, when there was no force employed, nor any unlawful act committed? Our laws recognize the absolute freedom of the individual to work for whom he chooses, with whom he chooses and to make any contract upon the subject that he chooses. There is the same freedom to organize, in an association with others of his craft, to further their common interests as workmen, with respect to their wages, to their hours of labor, or to matters affecting their health and safety. They are free to secure the furtherance of their common interests in every way, which is not within the prohibition of some statute, or which does not involve the commission of illegal acts. The struggle on the part of individuals to prefer themselves, and to prevent the work which they are fitted to do from being given to others, may be keen and may have unhappy results in individual cases; but the law is not concerned with such results, when not caused by illegal means or acts" (at pp. 334-335, 63 N. E. at 374-375).

Judge Vann, with the concurrence of two of his associates, however, dissented, most vigorously adhering to the doctrine announced in the *Curran* case and arguing for its social and legal soundness.

distinction was perceived between unions and other volun-

Three years later, the Court of Appeals, in *Jacobs v. Cohen*, 183 N. Y. 207, 76 N. E. 5 (1905), again with the vigorous dissent of Judge Vann, held legal and enforceable a contract between an employer and a union whereby the former agreed to employ only members of the latter. And in 1917, in *Bossert v. Dhuy*, 221 N. Y. 342, 117 N. E. 582 (1917), the Court of Appeals upheld the right of a union to coerce the employers of its members to use or work on only union-made material by striking or threatening to strike if the employers permitted the use of non-union-made materials. The reasoning of the court was as follows (at p. 355, 117 N. E. at 584) :

"It was not illegal, therefore, for the defendants to refuse to allow members of the Brotherhood to work in the plaintiffs' mill with non-union men. The same reasoning results in holding that the Brotherhood may by voluntary act refuse to allow its members to work in the erection of materials furnished by a non-union shop. Such action has relation to work to be performed by its members and directly affects them. The voluntary adoption of a rule not to work upon non-union-made material and its enforcement differs only in degree from such voluntary rule and its enforcement in a particular case."

The court added (at p. 359, 117 N. E. at 585) :

"An association of individuals may determine that its members shall not work for specified employers of labor. The question ever is as to its purpose in reaching such determination. If the determination is reached in good faith for the purpose of bettering the condition of its members and not through malice or otherwise to injure an employer the fact that such action may result in incidental injury to the employer does not constitute a justification for issuing an injunction against enforcing such action."

Also, at pp. 364-365, 117 N. E. at 587 :

"When it is determined that a labor organization can control the body of its members for the purpose of securing to them higher wages, shorter hours of labor and better relations with their employers, and as a part of such control may refuse to allow its members to work under conditions unfavorable to it, or with workmen not in accord with the sentiments of the labor union, the right to refuse to allow them to install non-union-made material follows as a matter of course, subject to there being no malice, fraud, violence, coercion, intimidation or defamation in carrying out their resolutions and orders.

"Voluntary orders by a labor organization for the benefit of its members and the enforcement thereof within the organization is not coercion."

The court was unanimous in expressing these views, and ten years later reiterated and summarized them in *Exchange Bakery & Restaurant v. Rifkin*, 245 N. Y. 260, 263, 157 N. E. 130, 132-133 (1927) as follows :

"The purpose of a labor union to improve the conditions under which its members do their work; to increase their wages; to assist them in other ways may justify what would otherwise be a wrong. So would an effort to increase its numbers and to unionize an entire trade or business. It may be as interested in the wages of those not members, or in the conditions under which they work as in its own members because of the influence of one upon the other. All engaged in a trade are affected by the prevailing rate of wages. All, by the principle of collective bargaining. Economic organization today is not based on the single shop. Unions believe that wages may be increased, collective bargaining maintained

tary associations, such as social clubs and fraternal lodges.<sup>29</sup> Since to the latter was accorded unregulated right of self-determination and government, there was disposition not to examine grounds of suspension or expulsion from unions. On the other hand, the courts' Anglo-Saxon sense of "natural justice" dictated that no member suffer except at the culmination of "due process."<sup>30</sup> So the courts were, and are, rather strict as to procedure<sup>30a</sup> and more or less *laissez faire* on the substantive side.

The cases require that: proper notice of the charges be given to the accused;<sup>31</sup> the charges adequately apprise the

only if union conditions prevail, not in some single factory but generally. That they may prevail it may call a strike and picket the premises of an employer with the intent of inducing him to employ only union labor. And it may adopt either method separately. Picketing without a strike is no more unlawful than a strike without picketing. Both are based upon a lawful purpose. Resulting injury is incidental and must be endured."

Compare, however, with *Hitchman Coal Co. v. Mitchell*, 245 U. S. 229, 38 Sup. Ct. 65 (1917).

<sup>29</sup> See, for example, *Maxwell v. Theatrical Mechanical Assn.*, 54 Misc. 619, 621, 104 N. Y. Supp. 815, 816-817 (1907), wherein the court said:

"In a purely voluntary association, the constitution and by-laws are the contract between the parties; and, if their provisions are not illegal, immoral or contrary to public policy, they must be upheld, whether reasonable or not; for parties have the right to enter into unreasonable and unwise contracts, so long as such contracts are not illegal and are fairly made. *Hess v. Johnson*, 41 App. Div. 465, 58 N. Y. Supp. 983; *Kehlnebeck v. Logenen*, 10 Daly 447; *Ulmer v. Minster*, 37 N. Y. Supp. 679, 16 Misc. Rep. 42; *Cunniff v. Jamour*, 31 Misc. Rep. 729, 65 N. Y. Supp. 317; *Saerwein v. Jamour*, 32 Misc. Rep. 701, 65 N. Y. Supp. 501; *Leahy v. Mooney*, 39 Misc. Rep. 829, 81 N. Y. Supp. 360; *Shafer v. United Brotherhood of Carpenters*, 22 Misc. Rep. 363, 49 N. Y. Supp. 151; *Jennings v. Chelsea Division, etc.*, 28 Misc. Rep. 556, 59 N. Y. Supp. 862; *Rubino v. Fraternas Assn.*, 29 Misc. Rep. 339, 60 N. Y. Supp. 461. The courts have invariably distinguished between the by-laws of corporations and those of voluntary associations."

Also *Greenwood v. Building Trades Council*, *supra* note 4.

<sup>30</sup> See *Cabana v. Holstein-Friesian Association*, 196 App. Div. 842, 848, 188 N. Y. Supp. 277, 282 (4th Dept. 1921), *aff'd*, 233 N. Y. 644, 135 N. E. 953 (1922).

<sup>30a</sup> As will appear from the cases cited *infra*, it is not enough that the proceedings be in accordance with the laws and regulations of the organization, for the accused must be also "tried according to the law of the land." *Wilcox v. Royal Arcanum*, 210 N. Y. 370, 376, 104 N. E. 624, 626 (1914). The procedural requirements are discussed with a goodly collection of cases in Note (1930) 30 Col. L. Rev. 853, to which the author is indebted for a number of the citations appearing *infra*. It is this writer's conclusion that generally the procedural requirements are stricter than is indicated in that paper.

<sup>31</sup> See Note (1930) 30 Col. L. Rev. 853, cases cited in footnote 28 thereof and *Matter of Koch*, 257 N. Y. 318, 178 N. E. 545 (1931), and cases cited at

accused of the acts complained of;<sup>32</sup> a trial be had upon due notice to the accused,<sup>33</sup> before a tribunal of unbiased persons,<sup>34</sup> constituted in accordance with the Constitution and By-laws of the organization;<sup>35</sup> the accused be accorded adequate opportunity to defend;<sup>36</sup> only evidence presented openly in the presence of the accused (except in the case of his default) be considered;<sup>37</sup> and that the proceedings be conducted in accordance with the organization's law,<sup>38</sup> which in turn must not contravene the requirements of "natural justice."<sup>39</sup> It would seem also, that, in the ab-

pp. 322-324 thereof, N. E. at 546. Also *People ex rel. Deverell v. Musical Mutual Protective Union*, 118 N. Y. 101, 23 N. E. 129 (1889); *Cabana v. Holstein-Friesian Association*, *supra* note 30; *People ex rel. Meads v. McDonough*, 8 App. Div. 591, 40 N. Y. Supp. 1147 (4th Dept. 1896); *Gilmore v. Palmer*, 109 Misc. 552, 179 N. Y. Supp. 1 (Sup. Ct. Monroe Co. 1919); *People v. Order of Foresters*, 162 Ill. 78, 44 N. E. 401 (1896).

<sup>32</sup> *Ibid.*

<sup>33</sup> *Lewis v. Wilson*, 121 N. Y. 284, 288, 24 N. E. 474, 475 (1890); *Roberts v. Schifferdecker*, 170 App. Div. 918, 154 N. Y. Supp. 1142 (2d Dept. 1915). This includes notice of and right to be present at, every step in the proceeding, such as the selection of the judges (*Knights of Pythias v. Eskholme*, 59 N. J. L. 255, 35 Atl. 1055 (1896)).

<sup>34</sup> *Matter of City of Rochester*, 208 N. Y. 188, 101 N. E. 875 (1913); *Wilcox v. Royal Arcanum*, *supra* note 30a at 378, 104 N. E. at 626; *Cabana v. Holstein-Friesian Association*, *supra* note 30, and 112 Misc. 262, 182 N. Y. Supp. 658 (1920); *People ex rel. Pond v. Board of Trustees*, 4 App. Div. 399, 39 N. Y. Supp. 607 (3rd Dept. 1896); *People ex rel. Meads v. McDonough*, *supra* note 31; *Williamson v. Randolph*, 48 Misc. 96, 96 N. Y. Supp. 644 (1905).

<sup>35</sup> The trial must be "before a tribunal authorized to hear the same" (*Reid v. Medical Society*, 156 N. Y. Supp. 780, 788 (1915), *aff'd*, 177 App. Div. 939, 163 N. Y. Supp. 1129 (3rd Dept. 1917)). "The decision made should be within the scope of the jurisdiction conferred on the committee" (*Lewis v. Wilson*, *supra* note 33, at 288, 24 N. E. at 475). See also *Jose v. Savage*, *supra* note 26. The trial must be upon a charge "within the jurisdiction of the tribunal trying him." *People v. Order of Foresters*, *supra* note 31.

<sup>36</sup> *Matter of Koch*, *supra* note 31; *Reid v. Medical Society*, *supra* note 35; *Williamson v. Randolph*, *supra* note 34. This includes the right to cross-examine adverse witnesses. *Cabana v. Holstein-Friesian Association*, 112 Misc. 262, 278-280, 182 N. Y. Supp. 658, 667-668, and cases therein cited (modified in other respects, see *supra* note 30).

<sup>37</sup> *Roberts v. Schifferdecker*, *supra* note 33; *Reid v. Medical Society*, *supra* note 35; *Cabana v. Holstein-Friesian Association*, *supra* note 36. The Reid case, at pp. 788 and 789, announces this doctrine very emphatically.

<sup>38</sup> *People ex rel. Meads v. McDonough*, *supra* note 31. The procedural requirements of the organization must be strictly observed. *Dingwall v. Amalgamated Ass'n*, *supra* note 5.

<sup>39</sup> *Olery v. Brown*, 51 How. Pr. 92 (N. Y. 1875); *Belton v. Hatch*, 109 N. Y. 593, 17 N. E. 225 (1888); *Lewis v. Wilson*, *supra* note 33; *Wilcox v. Royal Arcanum*, *supra* note 30a at 376, 104 N. E. at 626; *Young v. Eames*, 78 App. Div. 229, 241-2, 79 N. Y. Supp. 1068, 1075-6 (1st Dept. 1903), *aff'd*, 181 N. Y. 542, 73 N. E. 1134 (1905); *Williamson v. Randolph*, *supra* note 34; *Gilmore v. Palmer*, *supra* note 31; *Bricklayers, P. & S. Union v. Bowen*,

sence of any provision to the contrary, if the trial is before a committee or board or designated officers,<sup>40</sup> the trial must be before all the judges.<sup>40a</sup> If provision is made for a trial before a quorum composed of less than all the judges, or if the trial be before a meeting of the organization, there must be reasonable notice to all the judges or members, as the case may be, of the time and place of trial.<sup>41</sup> Where the trial is before a trial committee, but its decision is subject to confirmation at a meeting of the organization, or sentence is imposed by the vote of such meeting, there is the same

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*supra* note 25; *Inderwick v. Snell*, 2 Mac. & G. 216 (1850); *Hopkinson v. Marquis of Exeter*, L. R. 5 Eq. Cas. 63 (1867). In the *Bricklayers* case (183 N. Y. Supp. 855, 859), the court said:

"Such associations are not, however, above the law of the land, nor altogether a law unto themselves. Their very nature and frequent manner of operation require and find a jealous supervision, in order to prevent irreparable wrong being done to members under the guise of family chastisement. It is not the policy of the law that our people shall be left to suffer without redress from the whims or at the caprice of those to whom they have in good faith temporarily intrusted themselves and their affairs. Therefore, the law is vigilant to \* \* \* insure to every member \* \* \* fair play, which in the final analysis is the spirit of the law of the land."

<sup>40</sup> Unless the constitution or by-laws provide for or authorize a trial by designees, the weight of authority seems to be to the effect that the power of trial resides exclusively in the entire membership in meeting assembled and is not delegatable. *People ex rel. Meads v. McDonough*, *supra* note 31 (citing cases *pro* and *con*).

<sup>40a</sup> I know of no case directly in point, but it seems to me that the common law principle that whenever a power is conferred upon more than one, there must be unanimity of action for a lawful exercise of the power, applies here. That common-law principle is exemplified, for instance, in the requirement of a unanimous vote by a jury, and in requiring unanimous co-action of all executors and trustees in all matters involving the exercise of discretion. Directly in point is an analogy to be drawn from arbitration proceedings, where the rule is that, in the absence of provision to the contrary in statute or agreement, all the arbitrators must hear the controversy and agree upon a determination thereof (*Green v. Miller*, 6 Johns. 39 (N. Y. 1810); *Cope v. Gilbert*, 4 Denio 347 (N. Y. 1847)).

<sup>41</sup> *People ex rel. Meads v. McDonough*, *supra* note 31; *Matter of Koch*, 232 App. Div. 483, 485-6, 250 N. Y. Supp. 386, 388-9 (1st Dept. 1931) (the reversal of which by the Court of Appeals was on the ground of waiver—*supra* note 31). For analogy in arbitration proceedings, see *Bulson v. Lohnes*, 29 N. Y. 291 (1864); *Matter of Bullard v. Grace Co.*, 240 N. Y. 388, 148 N. E. 559 (1925); *Matter of A. E. Fire Ins. Co. v. New Jersey Insurance Company*, 240 N. Y. 398, 407, 148 N. E. 562, 565 (1925), the rule in arbitration proceedings being that where less than the full number may make a valid determination, the number required to make a valid determination constitutes a quorum in the absence of statute or contract to the contrary, but in that event less than the entire number of the arbitrators may proceed only where the absent arbitrators had proper notice and either refused to attend and participate in the proceedings or were wilfully absent.

requirement of notice and opportunity to be heard to the accused<sup>41a</sup> and of notice to all those entitled to vote on the matter,<sup>42</sup> and this applies also to a reconsideration.<sup>42a</sup> Any one or more of these requirements may be waived by the accused.<sup>43</sup> The charges must allege acts which constitute a violation of some provision of the organization's law<sup>44</sup> or of the member's obligation of loyalty,<sup>45</sup> and the penalty imposed must be one provided for by the organiza-

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<sup>41a</sup> People *ex rel.* Holstrom v. Independent Dock Builders' Benevolent Union, *supra* note 7; Fowler v. Larabee, *supra* note 33.

<sup>42</sup> People *ex rel.* Mead v. McDonough, *supra* note 31, is directly in point. While the opinion of the Appellate Division, Third Department, in Havens v. King, *supra* note 7 (where the trial committee was required by the constitution to report to the next regular meeting, and no notice of regular meetings was required, and the court sustained a vote of expulsion adopted at such regular meeting in the absence of notice to the members that the matter would be considered at the meeting), is susceptible of an inference that notice is unnecessary in the circumstances there presented, that inference, if intended by the court, is erroneous as appears from the opinion of the Appellate Division, First Department, in the later case of Matter of Koch, *supra* note 41, where the requirement of notice laid down in People *ex rel.* Mead v. McDonough was expressly followed, and the Court of Appeals impliedly sustained that holding but held that the plaintiffs had waived the defects. The true ground of decision in the Havens case is the same as that of the Court of Appeals in the Koch case, namely, waiver.

<sup>42a</sup> McCantz v. Brotherhood of Painters, 13 S. W. (2d) 902 (Tex. 1929). Fines imposed upon a reconsideration had without notice to the accused were held void.

<sup>43</sup> See Matter of Haebler, *supra* note 5 at 426, 44 N. E. at 91; Matter of Koch, *supra* note 31 (and cases cited therein); Havens v. King, *supra* note 7; People *ex rel.* Baker v. Coachmen's Union, 4 Misc. 424, 24 N. Y. Supp. 114 (Gen. T., 1893); National League of Commission Merchants v. Hornung, 148 App. Div. 355, 359, 132 N. Y. Supp. 871, 874 (4th Dept. 1911); People *ex rel.* Schults v. Love, 199 App. Div. 815, 818, 192 N. Y. Supp. 354, 356 (1st Dept. 1922); Williamson v. Randolph, *supra* note 34; Raych v. Hadida, 72 Misc. 469, 471, 130 N. Y. Supp. 346, 348 (Sup. Ct. Erie Co. 1911).

<sup>44</sup> Burke v. Monumental Division, *supra* note 9; *In re* Haebler v. N. Y. Produce Exchange, *supra* note 5; Miller v. Builders' League, 29 App. Div. 630, 53 N. Y. Supp. 1016 (1st Dept. 1898); Austin v. Dutcher, 56 App. Div. 393, 67 N. Y. Supp. 819 (1st Dept. 1900); Strauss v. Thoman, 60 Misc. 72, 111 N. Y. Supp. 745, *aff'd*, 129 App. Div. 905, 113 N. Y. Supp. 1148 (1st Dept. 1908); Ranken v. Probey, 131 App. Div. 328, 115 N. Y. Supp. 832 (3rd Dept. 1909); Fritz v. Knaub, *supra* note 21; Bricklayers, P. & S. Union v. Bowen, *supra* note 25; Connell v. Stalker, 21 Misc. 609, 48 N. Y. Supp. 77 (1897); Grassi Bros. v. O'Rourke, 89 Misc. 234, 153 N. Y. Supp. 493 (1915); Robinson v. Dahm, 94 Misc. 729, 159 N. Y. Supp. 1053 (1916); Dingwall v. Amalgamated Ass'n, *supra* note 5; People v. Order of Foresters, *supra* note 31; Spayd v. Ringing Rock Lodge, *supra* note 11; Luby v. Warwickshire Miners' Association (1912) 2 Ch. 371; Burns v. National Amalgamated Labourers' Union (1920) 2 Ch. 364; Amalgamated Society of Carpenters v. Braithwaite and General Union v. Ashley, 2 A. C. 440 (1922); Blackall v. National Union of Foundry Workers, 39 T. L. R. 431 (1923).

<sup>45</sup> *Supra* note 6.



tion's laws,<sup>46</sup> or expulsion in the case of gross breach of the obligation of loyalty.<sup>47</sup>

As to the right of trial before an unbiased (in the legal sense) tribunal, it was held in *Wilcox v. Royal Arcanum*,<sup>48</sup> that where the accused was charged with libel and the tribunal selected to try him was composed of the persons alleged to have been libelled, the proceedings were a nullity. But in that case there were others who were eligible to serve as judges. Not infrequently, the fundamental law of an organization constitutes a named board or designated officials as the sole tribunal for the trial of charges. Would the bias of so many of them as to leave less than a quorum of competent judges disqualify in such a case. If so, who could lawfully try the charges? At least one case holds that the action of the designated tribunal or officials is valid and binding.<sup>48a</sup>

Where the proceedings are free of fatal procedural defect, it is sometimes stated to be the rule of law that the courts do not review the organization's determination,<sup>49</sup> and usually and more accurately it is said that in those circumstances the courts, *ordinarily*, do not substitute their judgment for that of the association or its proper tribunal.<sup>50</sup> However, aside from reviewing the procedural regularity of the proceedings according to the rules above outlined, and in addition, reviewing the substantive sufficiency of the charges to the extent shown above and *infra*, the courts, also, set aside convictions where there is an absence of proper evidence to support it,<sup>51</sup> and probably, would do the same

<sup>46</sup> *People ex rel. Doyle v. Benevolent Society*, 3 Hun 361 (N. Y. 1875). See also *Polin v. Kaplan*, *supra* note 5; *Dingwall v. Amalgamated Ass'n*, *supra* note 5.

<sup>47</sup> *Supra* note 6.

<sup>48</sup> For other cases, see *supra* note 34.

<sup>48a</sup> *Hall v. Morrin*, 293 S. W. 435 (Mo. 1927).

<sup>49</sup> For example, the opinion (unreported) of the trial justice in *Polin v. Kaplan*, *supra* note 5, was as follows:

"The *proceedings* were in accordance with the laws of the association, and the courts will not examine into the merits of the expulsion."

<sup>50</sup> *People ex rel. Johnson v. N. Y. Produce Exchange*, 149 N. Y. 401, 44 N. E. 84 (1896); *Havens v. King*, *supra* note 7 (see quotation, *infra* note 52).

<sup>51</sup> *Fritz v. Knaub*, *supra* note 21; *Reid v. Medical Society*, *supra* note 35, at p. 789. See also *In re Haebler v. N. Y. Produce Exchange*, *supra* note 5 at 428, 44 N. E. at 91.

in a case where the weight of the evidence is very clearly contrary to the vote of guilt; particularly, if it should appear that the charges were merely a means of effecting an expulsion really desired for other reasons.<sup>52</sup>

There is, however, no requirement that a stenographic record be taken and kept of the proceedings, and in the absence of that, there might arise a dispute as to what was presented to and heard by the organization's tribunal, and it might be difficult to review the sufficiency or propriety of the proof that had been adduced.

While, on the whole, the procedural safeguards imposed by the courts are adequate, the administration of justice in these matters would be furthered by several changes. Accurate stenographic records should be required, and in the absence thereof, a member who feels aggrieved by a decision against him should be entitled to a court trial *de novo*. Such a trial should also be accorded to one convicted by a biased board, even if the board be the sole constitutional tribunal. And even where the entire membership acts as the trial tribunal, since in those cases it is rather rare that there should not be considerable heat and rancor, if the court upon examination of the record be in doubt as to the justice of the conviction, a trial *de novo* should be held.

With respect to the substance of charges, the law is in a very unsatisfactory state. Although the law does not accord organizations conclusive power and final arbitrament in the premises, the scope of the veto power exercised by the courts is narrow and uncertain and the courts in some respects have even enlarged the power of the organization beyond its own law, despite general statements to the contrary in a number of cases.

It has already been pointed out that disciplinary action taken by a union will be set aside where the matters charged against the member do not constitute a punishable offense under the law of the union or a "gross breach" of loyalty.<sup>52a</sup>

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<sup>52</sup> Grand International B. of L. Engineers v. Green, *supra* note 23 at 499, 98 So. at 572. See also Jose v. Savage, *supra* note 26. But see Havens v. King, *supra* note 7 at 479-480, 224 N. Y. Supp. at 197-199.

<sup>52a</sup> *Supra* notes 44 and 45.

But even where an express existing law of the organization is violated, the member is not necessarily foreclosed from relief by the courts. While it is declared that a constitution and by-laws, just "as they prescribe the precise terms upon which membership may be gained," so may they also "conclusively define the conditions which may entail its loss,"<sup>53</sup> this broad rule is subject to two qualifications: (1) that the condition sought to be imposed and enforced be not unreasonable,<sup>54</sup> and (2) that such condition violate no law of the sovereign and contravene no public policy.<sup>55</sup>

On the other hand, in addition to the power to discipline in accordance with its express laws, the organization

<sup>53</sup> Polin v. Kaplan, *supra* note 5 at 281-2, 177 N. E. at 834.

<sup>54</sup> People *ex rel.* Gray v. Medical Society, 24 Barb. 570, 575 (N. Y. 1857); People *ex rel.* Doyle v. N. Y. Benevolent Society, *supra* note 46; Brown v. Supreme Court I. O. F., 34 Misc. 556, 70 N. Y. Supp. 397, *aff'd*, 66 App. Div. 259, 72 N. Y. Supp. 806 (4th Dept. 1901), *aff'd*, 176 N. Y. 132, 68 N. E. 145 (1903); McCord v. Thompson-Starrett Co., 198 N. Y. 587, 92 N. E. 1090 (1910); Wilcox v. Royal Arcanum, *supra* note 8; People *ex rel.* Meads v. McDonough, *supra* note 31 at 599-560, 35 N. Y. Supp. at 219-220; Robinson v. Dahm, *supra* note 44. In the Brown case *supra*, the court at Special Term said: "The law is well established that the rules and regulations of organizations of this character must be reasonable to be binding \* \* \*" (at 560, 70 N. Y. Supp. at 400); and the Appellate Division, after stating, "By the express terms of his agreement the relator has agreed to conform to the constitution and by-laws of the order," continued: "While due force will be given to the contract made by any member of one of these mutual benefit societies, it cannot be expected that the state courts will abdicate their jurisdiction and be supplanted by courts provided for by the constitution and laws of the association. And wherever an unreasonable or unjust restriction or burden is put upon a member of a fraternal society, the courts will interfere to protect the rights of such member" (at 262, 72 N. Y. Supp. at 808-9). And the Court of Appeals in that case said: "Conceding that the constitution and by-laws of the defendant are a part of the contract between the parties and the general rule that the law permits great freedom of action in making contracts, there are some restrictions placed upon that right by legislation, by public policy and by the nature of things. \* \* \* The learned courts below have held that the by-laws had no effect upon the status of the relator as a member of the order in good standing for the reason that in so far as they deprived him of the rights acquired by his membership they were unreasonable and void. We fully concur with this view of the case and in the reasons stated in support of it in the learned opinion below" (at 137-138, 68 N. E. at 146).

That requirement of reasonableness is also recognized in Polin v. Kaplan, *supra* note 5, where immediately following the statement that the constitution and by-laws of an association may "conclusively define the conditions which will entail" the loss of membership, the court states: "Thus, if the contract reasonably provides that the performance of certain acts will constitute a sufficient cause for the expulsion \* \* \*" (at 282, 177 N. E. at 834). The apparently *contra* statement in Maxwell v. Theatrical Mechanical Ass'n, *supra* note 29, seems to be overruled.

<sup>55</sup> Brown v. Supreme Court I. O. F., *supra* note 54; and *supra* notes 10, 11, 22, 23, 24.

has the implied power to expel a member for a gross breach of his obligation of "loyal support of the society in the attainment of its proper purposes";<sup>56</sup> and the fact that the constitution and by-laws may contain a varied and detailed penal code, so to speak, does not in any way limit the implied power.<sup>57</sup> Apparently, the principle of *inclusio unius est exclusio alterius* does not apply. Furthermore, reasonableness and public policy are not very satisfactory limitations, in the absence of a wide range of adjudications on the subject.

What provisions the courts will regard as unreasonable is entirely a matter of speculation. In the cases which have arisen, with very few exceptions,<sup>57a</sup> the courts shied at declaring unreasonable the substantive provisions that were invoked; where their consciences were shocked by the ground of the penalization, they resorted to a strict construction of the organization's fundamental law and concluded that the acts charged did not come within it.<sup>58</sup> It is probably correct to surmise that harshness or arbitrariness will not be sufficient to outlaw a provision if it deal with a matter directly within the scope of the union's activity. Thus, for example, a union by-law prohibiting members from ad-

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<sup>56</sup> Polin v. Kaplan, *supra* note 5 at 283, 177 N. E. at 834.

<sup>57</sup> The constitution and by-laws of the union involved in Polin v. Kaplan, *supra* note 5, set forth at least ten specific offenses and provided penalties therefor ranging from a fine of fifty cents to expulsion. But see Burns v. National Amalgamated Labourers' Union, *supra* note 44, at 373-374, wherein the court said that the power to discipline "being in its nature penal, has to be exercised strictly in accordance with the language of the rule" and that there "ought not be implied" any power beyond that; and also Dingwall v. Amalgamated Ass'n, *supra* note 5 at 570, 88 Pac. at 601: "By enumerating certain offenses for which the penalty of expulsion may be imposed, the right to inflict such penalty for any other offense is impliedly excluded."

<sup>57a</sup> People *ex rel.* Gray v. Medical Society, *supra* note 54. In People *ex rel.* Meads v. McDonough, *supra* note 31, the court was liberal with dicta as to what may and what may not be made lawful ground of expulsion, but the expulsion in that case was set aside on a procedural ground, because a brother of the accused's prosecutor was a member of the trial committee, and compare (see note 73) the dicta with Polin v. Kaplan, *supra* note 5. In the Brown case, *supra* note 54, a by-law which constituted the organization's financial secretaries the member's agents so that where a financial secretary failed to properly record and account for dues paid to him by a member, the latter was in default in the payment of dues was held to be void for unreasonableness; but it was also said to be void because it attempted to overrule the law of agency and to alter legal relationships by fiat or misnomers, and was, therefore, contrary to law.

<sup>58</sup> Burke v. Monumental Division, *supra* note 9; Fritz v. Knaub, *supra* note 21; Connell v. Stalker, *supra* note 44; Amalgamated Society of Carpenters v. Braithwaite, *supra* note 44.

versely criticising an officer or a decision of the union, except in executive session of the union itself, regardless of the truth, merit and good intentions of the criticism, and providing that any member violating the rule should be expelled, probably would not be held unreasonable even though the criticism in a particular case be just and proceed from a motive to improve the affairs of the union and its members and be the outburst of true devotion thereto.

While it has been said that by openly making a well founded accusation that officers of an organization are "grafters" a member might be discharging his "highest duty" to the organization and that "the temporary injury resulting from the exposé of wrongdoing was more than offset by the permanent good,"<sup>59</sup> nevertheless, if the law of an organization should expressly legislate against the subordination of the temporary injury to the permanent good, it is extremely unlikely that the courts would take it upon themselves to outlaw such intraorganization regulation. Moreover, if a particular prohibition be not unreasonable, query, whether the courts would vacate an expressly authorized penalty if such penalty be deemed unnecessarily and despotically harsh and extreme.

The reservation or qualification of reasonableness in the statement that a member is bound by the provisions of his association's constitution and by-laws probably does not reflect a perception by the judges of any definite limitations but rather results from the habitual circumspection of well chosen judicial language, which, in the enunciation of general rules, employs "safety valves" of that character, sometimes without realization of what is being saved. If anything definite was envisaged, it was probably nothing more than that members are not bound by regulations beyond the scope of the association's proper purposes,<sup>60</sup> such as attempts to

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<sup>59</sup> Wilcox v. Royal Arcanum, *supra* note 8 at 379, 104 N. E. at 627.

<sup>60</sup> Of necessity, the purposes for which persons associate together define the powers delegated to the entity over the individuals. Any laws it may adopt, whether in the form of constitution, by-laws, regulations or resolutions, must be in furtherance of, and have some reasonable connection with, the ends of the association. See Schneider v. Local Union No. 60, *supra* note 24. Naturally, the delineation is not sharp, and while whether some acts are within or without the scope of the organization may be subject to debate, others are so clearly in one category or the other as to be beyond debate.

regulate the conduct of members in matters or respects unrelated to the proper scope of the organization.<sup>61</sup> Such a by-law would be held void for unreasonableness. Perhaps, it would be better logic to say that it is void as *ultra vires*. Similarly, an attempt to punish or eliminate a member for an act unrelated to the welfare of the association, under a blanket provision authorizing discipline for acts deemed injurious, detrimental or prejudicial, would be held an unreasonable application of the by-law; but then, too, ordinary judicial construction of the by-law or the doctrine of *ultra vires* would serve to nullify the organization's determination.

Except in the two respects just mentioned, the qualification of reasonableness, in all likelihood, will find little empirical application, unless the courts, recognizing the needs of the times and the grave consequences of injustice to individual members by associations that control their members' economic existence, should become more critical than they have been of the disciplinary action of such aggregates and more solicitous of the individual member's welfare.<sup>62</sup> Such

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<sup>61</sup> For example, in *Tyborowski v. Kaplan*, *supra* note 7, where the ground of discipline was alleged assault by the accused on another member and allegedly false testimony concerning the same, Mr. Justice Cropsey (Sup. Ct. Kings Co.) in granting a motion for an injunction *pendente lite*, held, in an unreported opinion, that the alleged acts could not be "the basis of suspension or expulsion" and that that was "manifest"; and in *Commonwealth v. St. Patrick Benevolent Society*, 2 Binn. 441 (Pa. 1810) the court held void a by-law permitting expulsion for vilifying any of the members, that not being an offense which affects the interests or good government of the organization, private quarrels being totally unconnected with the affairs of the society.

<sup>62</sup> There is certainly a growing tendency in that direction. In *Bricklayers', P. & S. Union v. Bowen*, *supra* note 25 (183 N. Y. Supp. at 861), the court said:

"Labor organizations have become an integral part of our business life and wield a powerful influence upon the everyday affairs of multitudes of our people. \* \* \* [who] must rely on their honest, fair and efficient management for opportunity to support themselves and their families. These members constitute a goodly percentage of our citizenship, and the state is vitally interested in their welfare."

Similarly, in *Jose v. Savage*, *supra* note 26, at 284, 205 N. Y. Supp. at 7, the court said:

"The great importance of labor unions in contemporary economic life requires that, for the sake of the public, of their own members, and of the institution itself, their affairs should be conducted with decent regard for the rights of their members."

And compare the decisions of the Court of Appeals in *Polin v. Kaplan*, *supra* note 5, with *Matter of Koch*, *supra* note 31, in the latter of which the court distinguishes the rules governing amotion from those governing disenfranchisement and is rather liberal in sustaining amotion.

a change of attitude requires the abandonment, with respect to such associations, of the maxim of the courts—already rendered practically meaningless by exceptions—that they will not, ordinarily, interfere in the internal affairs of associations.

The limitations of lawfulness and public policy are more potent. In the absence of applicable statutory limitations, "public policy" as conceived by the courts has served to curb certain categories of intraunion despotism. Thus far, public policy has been held to outlaw penalization of a member for resorting to the courts of the land,<sup>63</sup> for petitioning the legislature,<sup>64</sup> for disregarding union instructions in the course of testimony as a witness under subpoena,<sup>65</sup> for disregard of union instructions in the course of a member's discharge of his duty as a municipal official,<sup>66</sup> for a declaration that his devotion to his country takes precedence over his loyalty to his union.<sup>67</sup>

The rule to be deduced from these decisions is that the law will not permit private bodies to control with sanctions a member in the exercise of his civic rights or prerogatives or in the discharge of his civic duties. Just as it is deemed in furtherance of the public weal to privilege a legislator,<sup>68</sup> judge,<sup>69</sup> a litigant and his attorney,<sup>70</sup> etc., in the discharge of his official duties and in the official exercise of the prerogatives of his office, so, too, is a citizen immune from private sanctions, for his acts and words as a member of the sov-

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<sup>63</sup> *Polin v. Kaplan*, *supra* note 5. The Court of Appeals in that case held that the commencement and prosecution of actions against the union, as a matter of law, "displayed no disloyalty to the union and performed no act injurious to the society or tending to its disruption," and added: "It was the absolute right of the plaintiffs to bring the suit whether they could successfully maintain it or not and they might not be expelled for having so done" (at 284, 177 N. E. at 835). The Appellate Division (2d Dept.) in the same case held that "an appeal to the courts, in and of itself," could not be made "such a violation of the by-laws as to justify expulsion" (231 App. Div. 849, 850, 246 N. Y. Supp. 524).

<sup>64</sup> *Supra* note 11.

<sup>65</sup> *Supra* note 10.

<sup>66</sup> *Supra* note 24.

<sup>67</sup> *Supra* note 23.

<sup>68</sup> See U. S. CONST., Art. I, Sec. 5; N. Y. STATE CONST., Art. III, Sec. 12.

<sup>69</sup> *Aylesworth v. St. John*, 25 Hun 156 (N. Y. 1881); *Valesh v. Prince*, 94 Misc. 479, 159 N. Y. Supp. 598 (1916), *aff'd*, 177 App. Div. 891, 163 N. Y. Supp. 1133 (1st Dept. 1917).

<sup>70</sup> *Lesser v. International Trust Co.*, 175 App. Div. 12, 161 N. Y. Supp. 624 (1st Dept. 1916); see *Pecue v. West*, 233 N. Y. 316, 135 N. E. 515 (1922).

ereign body politic and for his resort to its governmental powers. Even if a member abuse his privilege and do so out of malice, those injured thereby are limited to legal redress, if any they have; they may not take it upon themselves either to judge or punish him for his relations with the sovereign. The efficacy and supremacy of government could not otherwise be maintained.

While, as we have seen, the courts have curbed the disciplinary laws of organizations by rules against unreasonableness and of public policy, they, on the other hand, have enlarged the disciplinary power by affording associations the right to expel not only in the instances provided by its laws but for a "gross breach" of a member's obligation of loyalty.<sup>71</sup> The vagueness and elasticity of the latter rule are sufficient to condemn it. Unlike the similarly damnable blanket by-laws that some associations have, it cannot be said in support of this court-made rule that members are bound thereby because of their adoption thereof. It has always been recognized that penal statutes should be definite. The considerations which require that recognition of definiteness by the state apply even more to associations that control the member's livelihood—there, the excesses of the powers in control are not subject to check by disinterested juries. Moreover, the meaning and applicability of such rules are learned, in each case, only *ex post facto*. Therefore, sound public policy requires the elimination of all such elastic rules. The fundamental law of every union should set forth specifically what acts are prohibited and the consequence of transgression. That should be both the grant (to the extent it is valid) and limit of its disciplinary power. The organization law should be drawn with care so as to fully protect the organization. If, perchance, some harmful offence be overlooked, experience will result in amendment. While such amendment will not affect offences already consummated, it is far better that such offences go unrequited than that as a result of elastic provisions members find themselves fined, suspended or expelled for acts which they deem perfectly proper or outside the association's interest.

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<sup>71</sup> *Supra* note 6.



The improvidence of the "implied power" rule appears from its ramifications. A recent New York <sup>72</sup> case states that the court is not prepared to hold that the libelling of an officer is not just and sufficient ground for expulsion where the libel is unfounded and tends to the disruption of the organization.<sup>73</sup> Since the organization itself is the judge (on evidence) of the truth or falsity of the defamatory statements and of whether or not they tend to the disruption of the organization, where the officer is in effective control attacks upon him, however merited, may result in the expulsion of the attacker whenever willed by the defamed officer. This tends to make union leaders immune from criticism by their members. The policy of the state towards its own officers is quite the reverse; it is deemed in the public interest to permit criticism of those who conduct the state's affairs,<sup>74</sup> or run for office,<sup>75</sup> subject only to the ordinary laws of slander and libel and even these are applied more liberally in favor of the critic.<sup>76</sup> The power of an organization to expel for defamation is analogous to the unique power of the judiciary to punish for contempt of court, except that it is

<sup>72</sup> Polin v. Kaplan, *supra* note 5.

<sup>73</sup> In so holding, the Court of Appeals pointed out that in *People ex rel. Meads v. McDonough*, *supra* note 31, the court had drawn a distinction between slander of the organization and slander of an officer thereof, holding the former an act of disloyalty and the latter not such an act, but called attention to the statement in *Wilcox v. Royal Arcanum*, *supra* note 8, at 284-285, 104 N. E. at 627, that "undoubtedly it would injure the order temporarily, at least, to accuse its officers of being 'grafters,'" and concluded that it was "not prepared" to say that a member's slander of an officer, when "unfounded or \* \* \* made maliciously without probable cause" and which tends "to the disruption" of the organization does not justify his expulsion. The reasoning of the court in the *Meads* case, *supra* note 31, was that libeled or slandered members "can seek redress in the civil tribunals, and do not need the extreme remedy of excluding the offender \* \* \*" (at 600, 35 N. Y. Supp. at 220).

<sup>74</sup> See *Bingham v. Gaynor*, 203 N. Y. 27, 96 N. E. 84 (1911).

<sup>75</sup> *Cortright v. Anderson*, 208 App. Div. 1, 202 N. Y. Supp. 729 (4th Dept. 1924).

<sup>76</sup> *Supra* notes 74 and 75, and see *Hoepfner v. Dunkirk Printing Co.*, 254 N. Y. 95, 172 N. E. 139 (1930). It is interesting to note that in *Hall v. Morrin*, *supra* note 48a (293 S. W. 435—Mo. 1927), where the member was charged with having defamed the officers of the union in a petition presented in a court proceeding, it was held that "the fact that the statements, charged to have been wrongfully and unjustly made, appeared in plaintiff's petition filed in court, rendered them none the less subject" to disciplinary action, even though the matter was privileged from suit for libel, the court saying that a member is in no position to complain of the unreasonableness of a provision in the contract of membership which contravenes "what might otherwise have been regarded as his common rights." This case cannot be reconciled on principle with those cited in *supra* notes 54, 63-67.

more extensive and it is not subject to, and therefore not curbed by, the adverse publicity that a grave abuse of the power by a judge is bound to bring. The power vested in the associations is even more extensive than the contempt power of the judiciary, for the latter is limited to the punishment of contumacy directly related to official acts. The defamation of a judge with respect to matters not related to his office—for example, calling him a scoundrel, thief or swindler in his private life or business dealings—does not authorize the exercise of the judge's or his court's disciplinary power. Whereas, the theory of the rule authorizing associations to expel members who defame their officers permits no distinction between accusation of misfeasance in office and denunciation for other cupidity. Suppose that a member of a union say of an officer that no fault can be found with his conduct in relation to the union and its members but that he is a gangster or kidnapper or murderer; if the statement be widely published and credited, certainly that would react unfavorably on the union; and under the rule here discussed expulsion of the member would be in order if the union determine that the defamatory statements were false. To be sure the harm to the repute and effectiveness of the organization resulting from an accusation of that character might be greater than from a charge that the officer appropriated to himself \$25,000 of the union's funds, and if there is to be a power to expel for defamation, it is reasonable that it should be exercisable in one case as in the other, on the principle that its exercise should depend upon the injury done to the organization rather than on technical distinctions between attacks on an officer *ex officio*, or merely as an individual. It is, however, well to appreciate the scope of the power in the consideration of its propriety. At first blush, it might appear proper that an organization should have the power to expel a member who, by defamation of one kind or another, brings disrepute upon it. But it must be realized that the power inevitably leads to suppression and oppression; it serves to conceal wrongdoing and to promote tyranny; it subjects to woeful hardship those brave souls who rise to tell the truth, or what they believe to be the truth, regardless of the hazard encountered. Free speech,

after all, has great therapeutic power which far outweighs occasional temporary victimization, and is a right that is priceless to men of self-respect. A power to punish for words is so suspect of evil that it should be exercisable only with the greatest safeguards and may not be entrusted to private persons or bodies, particularly, where the personal interest of the one aggrieved by the words might influence the disciplinary proceeding. The fact that harm is done to the organization is not sufficient to call for the exercise of the power. Suppose precisely the same accusation is made by one who is not a member and it receives equal or greater publicity and credence, what then? Or suppose, the accusation is made by a member as a relevant and material statement in the course of litigation or is made the basis of litigation? It will be without recourse then. Why must it have recourse where it is a member who makes the statement and he makes it on the floor of the union rather than in court? The consequences that come from such occurrences are unavoidable incidents of social life, and must be suffered as such without private vengeance. There is no right of private redress. We have a judicial system and penal codes to supplant private chastisement. Therefore, the disciplinary power of unions should be exercised most sparingly. It seems to the writer to be in the public interest that the disciplinary power of unions be confined to specified offences set forth in the union's fundamental law, and that defamation or contempt of the union or its officers be not such an offence.

There is one other element in the exercise of the disciplinary power which calls for consideration. The fundamental laws of unions, as of other organizations, not infrequently provide for a system of appeals from decisions in disciplinary proceedings. Usually, unions are locals or branches of a nation-wide organization, and, commonly, the order of appeal includes provision for appeal to the parent body or tribunals thereof. Not infrequently, provisions of the latter kind are illusory more than real because the constitutions and by-laws of the parent bodies extend to the locals complete self-determination and "home rule," and thereby bar the review of a local's discipline of a member.

The general rule of a number of the courts is that they

will not review or interfere with the fine, suspension or expulsion of a member until he has exhausted his remedies within the organization.<sup>77</sup> But the courts have been alive to the injustice of an indiscriminate application of the rule. Thus, it is held, that where the action against the member is dependent upon the construction or application of a law of the organization,<sup>78</sup> or where the objection to the action rests upon the absence of a law justifying the action or the illegality of the law upon which the action was predicated,<sup>79</sup> and, generally, where the proceeding presents solely questions of law,<sup>80</sup> exhaustion of the rights of appeal within the organization is unnecessary. Stated differently, the rule is that where the action against the member is void either under

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<sup>77</sup> *Lawson v. Hewell*, 118 Cal. 613, 50 Pac. 763 (1897); *Mead v. Stirling*, 62 Conn. 586, 27 Atl. 591 (1892); *Edrington v. Hall*, 168 Ga. 484, 148 S. E. 403 (1929); *People v. Order of Foresters*, *supra* note 31; *Jeane v. Grand Lodge*, 86 Me. 434, 30 Atl. 70 (1894); *Oliver v. Hopkins*, 144 Mass. 175, 10 N. E. 776 (1887); *Harris v. Detroit Typographical Union*, 144 Mich. 422, 108 N. W. 362 (1906); *Crutcher v. Eastern Division Order of Railway Contractors*, 151 Mo. App. 622, 132 S. W. 307 (1910); *Hall v. Morrin*, *supra* note 48a; *Wilber v. Lincoln Aerie*, 99 Neb. 428, 156 N. W. 658 (1916); *Crisler v. Crum*, 115 Neb. 375, 213 N. W. 366 (1927); *Zeliff v. Knights of Pythias*, 53 N. J. L. 536, 22 Atl. 63 (1891); *McCantz v. Brotherhood of Painters*, *supra* note 42a; *Essery v. Court Pride of the Dominion*, 2 Ont. 596 (1883); *Kelly v. National Society of Printers' Assistants*, 84 L. J. K. B. (N. S.) 2236 (1915); *Havens v. King*, *supra* note 7; *Johansen v. Blume*, 53 App. Div. 526, 65 N. Y. Supp. 987 (4th Dept. 1900); *Local Union 1006 v. Brotherhood of Painters*, 149 N. Y. Supp. 1025 (Sup. Ct. Kings Co. 1914); *O'Connor v. Morrin*, 109 Misc. 379, 179 N. Y. Supp. 599 (Sup. Ct. Kings Co. 1919). Apparently the New York Court of Appeals has never committed itself to this general rule; it refused to apply it in the Brown case, *supra* note 54, and ignored it in *Polin v. Kaplan*, *supra* note 5 (see *infra* note 79).

<sup>78</sup> *People ex rel. Weiss v. Bernstein Sick & Benefit Soc.*, 161 App. Div. 823, 146 N. Y. Supp. 886 (1st Dept. 1914).

<sup>79</sup> *Schou v. Sotoyme Tribe*, 140 Cal. 254, 73 Pac. 996 (1903); *Abdon v. Wallace*, *supra* note 10 ("such suspension being void \* \* \* appellant \* \* \* [was] not thereafter required to seek relief within the brotherhood, but [was] entitled at once to resort directly to the courts") (p. 75); *Pirics v. First Russian Society*, 83 N. J. Eq. 29, 89 Atl. 1036 (1914); *Brown v. Supreme Court I. O. F.*, *supra* note 54; *Polin v. Kaplan*, *supra* note 5, where the opinion of the court does not even take notice of the defendant's objection that plaintiff had failed to exhaust his remedies.

<sup>80</sup> The Special Term's opinion in the Brown case, *supra* note 54, at 561, 70 N. Y. Supp. at 401, approved by both the Appellate Division and the Court of Appeals, said:

"It is unreasonable that the rules of such an order should compel appeals through a channel of tribunals where the question involved is one solely of law, and where vested rights are in the balance."

To the same effect is the Special Term decision (Judge Dunne) in *Polin v. Kaplan*, on motion for injunction *pendente lite*, 135 Misc. 828, 238 N. Y. Supp. 460 (Sup. Ct. Kings Co. 1930); and *Bray v. Grand Lodge, Knights of Pythias*, 121 Misc. 764, 202 N. Y. Supp. 219 (Sup. Ct. West. Co. 1923).

the law of the organization or the law of the land, whether due to a defect in substance or procedure, the member has immediate right of recourse to the courts; and this has been applied to a case where the expulsion was illegal because without notice or trial.<sup>81</sup> Exhaustion of remedies is unnecessary also where the organization embarrasses or attempts to block the appeal.<sup>82</sup> And where the process of appeals within the organization is not accompanied by a stay of the determination against the member, so that during the pendency of the appeals he would be deprived of substantial property rights such as employment, the necessity of exhaustion of remedies is dispensed with.<sup>83</sup> Furthermore, where following the order of appeal would be vexatious, such as where long delay would be involved and the member would be placed under the necessity of traveling a great distance,<sup>84</sup> or where carrying out the order of appeal would be futile,<sup>85</sup>

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<sup>81</sup> *People v. Order of Foresters*, *supra* note 31. In *Knights of Pythias v. Eskholme*, *supra* note 33, where the court held that the proceedings were irregular in several respects and that, therefore, jurisdiction was lacking, the court said at 259, 35 Atl. at 1059:

"The want of jurisdiction does away with the obligation to seek relief by appeal, even when required by the constitution of the lodge in otherwise proper cases \* \* \*. The duty \* \* \* to exhaust remedies \* \* \* arises only where the association is acting strictly within the scope of its powers."

In *McCantz v. Brotherhood of Painters*, *supra* note 42a, it was held that there was no need of exhausting internal remedies because the penalties were imposed upon a reconsideration had without notice to the accused. Similarly in *Gilmore v. Palmer*, *supra* note 31, where the expulsion was illegal because it was without notice or trial, it was held that internal remedies need not be exhausted. Generally, it is said that internal remedies need be pursued "only when the association has acted strictly within the scope of its powers." *Hall v. Morrin*, *supra* note 48a. But see *Jeane v. Grand Lodge*, *supra* note 77.

<sup>82</sup> *Corregan v. Hay*, 94 App. Div. 71, 87 N. Y. Supp. 956 (4th Dept. 1904). The disciplined member in this case was refused access to records necessary for the prosecution of his appeal unless he first pay the fine imposed upon him.

<sup>83</sup> *Bricklayers', P. & S. Union v. Bowen*, *supra* note 25 at 863; *Neal v. Hutcheson*, 160 N. Y. Supp. 1007 (Sup. Ct. Bronx Co. 1916); *O'Connor v. Morrin*, *supra* note 77; *Sons of Italy v. Supreme Lodge*, 125 Misc. 572, 211 N. Y. Supp. 548 (Sup. Ct. N. Y. Co. 1925). *Contra Harris v. Detroit Typographical Union*, *supra* note 77 (144 Mich. 422, 108 N. W. 362 (1906)).

<sup>84</sup> *Brown v. Supreme Court I. O. F.*, *supra* note 54; *Schneider v. Local Union No. 60*, *supra* note 24.

<sup>85</sup> *Corregan v. Hay*, *supra* note 82, where the appeal would be heard by one having a personal interest in the matter. *Schneider v. Local Union No. 60*, *supra* note 24; see also *Brown v. Supreme Court I. O. F.*, *supra* note 54. Where the scope of review by a parent body or a tribunal within it is limited, by "home rule" provisions, to an inquiry whether or not disciplinary action violates any provision of the constitution and by-laws of the parent body, an appeal

a member's right of recourse to the courts is complete without the exhaustion of remedies within the organization.

### III.

#### INTERNAL ADMINISTRATION.

The importance of labor unions being properly officered is in direct proportion to the power of the organization over its own members and their employers. The selection of the officers, must, of course, be left to the members. Although there can be no adequate substitute for wisdom, vigilance and courage on their part, we must be realistic enough to recognize that the tendency, in most of our institutions, just as in our municipalities, is for the unfit and corrupt to attain control and perpetuate it by political machines which ignore all decencies and which are powerful enough to bend the knees and exact homage even of those whose instincts normally would revolt against such personalities and their deeds and methods. Therefore, there must be some limitations imposed by a higher power.

It is obvious that no responsible union office should be held by anyone who has conflicting interests, actual or potential. For example, one engaged in a business that sells or caters to the employers of the union's members should be disqualified. So, too, should be one who is directly or indirectly an employer, particularly if he employ non-union help. While it would seem that no union would elect to responsible office within it one with such contacts or activities, the fact is to the contrary.

It should be recognized that union officers are fiduciaries and their conduct should be controlled by the exacting standards that equity prescribes. Any dealings with the em-

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would be futile when predicated upon the ground that the disciplinary action was contrary to the law of the local or the law of the land.

Notwithstanding the above-mentioned exceptions to the general rule, the general rule is, nevertheless, usually urged by unions in an attempt to defeat actions against them by disciplined members, not infrequently with effect adverse to the member, at least in the lower courts. The fact that the general rule is so frequently stated and the exceptions are lost sight of is an obstacle to justice in this class of cases.

employers that are or may tend to the personal benefit of the officer is a violation of his duty—whether they be, directly or indirectly, loans, gifts or benefits of any kind, except, of course, employment in the regular course of business on a parity with the other members, without favoritism of any kind. Exactions from employers, under whatever guise and whatever may be the purported consideration or purpose thereof, are intolerable.

The officers of unions handle very large sums of union funds. Certainly, complete detailed accurate and intelligible records should be kept of their receipt and disbursement. Yet, in some cases \$10,000 and \$5,000 items of cash withdrawn by an officer has no record other than an entry on the stub of the check book "organization expense" or a similar notation.

Officers should be required to account to their organizations for their funds. Yet, there have recently been instances of where no accountings had been rendered and where actions were brought to compel accountings and those were resisted by retaliation in the form of expulsion of the plaintiffs and those cooperating with them, and with all the dilatory tactics in the accounting actions that expensive and resourceful counsel could summon, and the paradoxical situation is presented of officers spending the funds of the members in a fight against disclosure to them, or those of them that are interested, of how their money has been used.

There is also the problem of compensation. In the early stages of the development, officers continue to practice their trades and administer their offices for considerations other than material. As unions develop strength and treasuries, the tendency is to make the offices vocational and to provide for compensation as such. Perhaps it is in the interest of the unions to have their officers devote their entire time to the affairs of the union. But in that event, should the compensation of the officers be out of proportion to the amounts which they would earn by continuing their trade, or which their brethren earn?

The writer is not advised as to the usual range of the salaries paid by unions to their officers. In one case that he knows, the president and general organizer (who devotes

only half of his time to the union and is engaged in private business) receives a salary of \$21,800 per year, in addition to which he has received in the past three or four years, \$55,000 as gifts, and the other officers, of whom there is a goodly number, receive proportionate salaries. These have been paid by an organization of approximately 1,200 men, the most fortunate of whom earn no more than about \$5,000 per year when steadily employed. When the compensation is so high, the temptation for one who has once been elected to office to perpetuate himself therein is almost irresistible, by whatever means may be effective to that end.

#### IV.

##### REMEDIES.

Doubtlessly, the evils and abuses discussed above should be remedied. The question is how.

Many of the abuses could be remedied, if the national leaders of trade unionism were minded so to do. But the whole movement seems to be permeated with the principle of "home rule" which leaves to each local union complete control over its own affairs and members without interference by the respective federations; and thus there seems to be no supervisory regulations and no supervision. Indeed, when disgruntled members attempt to gain the interest or aid of the officers of the national organizations, they are met with the statement that such officers are powerless to act.

If the union movement is unable or refuses to maintain its own houses in order,<sup>86</sup> the only alternative is regulation by law. Of course, perfection will not be achieved or even approximated by that means. But that is no reason for not prescribing by law proper standards and for providing, as far as the law can, for the enforcement of the observance of those standards.

We regulate by law the conduct of banks, insurance companies, pawnbrokers, employment agencies; the administra-

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<sup>86</sup> The New York World-Telegram, for months, has on its editorial page directed the attention of the "leaders" of labor to abuses within the locals and called upon them to act—apparently, to no avail.



tion of estates, the sale of stock, the breeding of domestic animals.<sup>87</sup> We compel by law the education of our children. We coerce by law, the observance of health, safety and sanitation standards, in the construction, equipment and maintenance of dwellings and other buildings, preparation and dispensing of food, maintenance of streets and public conveyances, etc. We prohibit monopolies. We regulate public utilities. Why should we not regulate trade unions?

With respect to workers, we have strict laws and a labor department to force the furnishing of safe, clean and tolerably comfortable and properly equipped places to work in, and to regulate the working hours and conditions of women and children; we compel medical treatment and compensation for industrial injuries and disabilities. We protect the workmen by law with respect to many of his relations with his employers. Why should he not be protected in those of his relations with his fellow workers upon which his livelihood depends?

The time has come for a Trade Union Act which should, *inter alia* (1) prohibit the requirement of any but nominal—say not more than \$100—initiation or other admission fee or charge; (2) prohibit classification of, or discrimination between, members and associates of a union, so that all shall be members with complete parity of rights, privileges and obligations, except that priorities may be established in the assignment to positions dependent upon the experience of the men, age of membership in the union, and/or home status, that is whether with or without dependents, and except that the amount of dues and assessments may be fixed on a percentage of the members' earnings but the percentage should be uniform to all except that it may be graduated upwards; (3) prohibit the fining or other penalization, suspension or expulsion of any member except for acts specifically prohibited by the Constitution or By-Laws of the union and made punishable thereby, and provided such prohibitions are not contrary to law and are reasonably necessary to the efficient fulfillment of the union's proper purposes or to its proper functioning; (4) prohibit discipline of any kind for

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<sup>87</sup> §§95 (L. 1922, c. 48, amended by L. 1925, c. 38), 97, 105, and 105a, THE FARM AND MARKET LAW of the State of New York.

\* any act in the discharge of a member's duties or rights as a citizen or resident or official of his country, state or municipality, including resort to, or testimony before, court or governmental commission, body or official; (5) prohibit discipline for statements, written or oral, wherever made, reflecting on the organization or any of its officers or members; (6) provide that no member be fined, suspended, expelled or in any way penalized except after the preferment of charges in writing, the delivery of a copy thereof to him, a trial, upon due notice to the accused and all persons entitled to sit in judgment, before the organization or a committee of unbiased persons designated by it or before a tribunal provided therefor in the union's constitution or by-laws, at which trial there shall be received and considered only evidence presented in the presence of the accused (except in case of his default), and at which the union shall require the attendance of such of its members as the accused shall ask be called as witnesses, and at which the accused shall be afforded full opportunity to cross-examine and defend, and compliance with all the applicable provisions of the Act and also of the union's constitution and by-laws not inconsistent with law; (7) provide that every member of the trial committee who participates in the trial shall take oath at the inception thereof that he has no bias against the accused or any prejudgment of the charges and that he will faithfully and fairly hear and examine the matters in controversy and render a just decision thereon according to the best of his understanding; (8) provide that where the constitution and by-laws require that the report of the trial tribunal be passed on at a meeting of the organization or a body thereof other than the trial board, the latter shall report in writing a summary of the proof adduced and their findings and decision thereof, and that due notice that the matter would come up for consideration be given to all persons entitled to attend; (9) provide that a true and correct stenographic record of the proceedings at the trial and subsequent thereto be taken and kept by a duly certified shorthand reporter sworn as to his disinterestedness and the proper performance of his task; (10) provide for a court review of the proceedings and determination, with power in the court to enjoin

*pendente lite* the union from giving any force or effect to its decision, and with the right in the court to require a trial *de novo* before it when it deems same in the interest of justice; (11) prohibit a member who is himself an employer of labor or who has conflicting interests of the kind indicated above, from holding office in the union; (12) prohibit an officer from, directly or indirectly, exacting compensation or accepting gratuities from members, except salaries duly voted to him; (13) limit the compensation paid to any one officer to not more than the maximum earned by the best paid member in the pursuit of the trade of the members; (14) prohibit an officer from, directly or indirectly, having any dealings or transactions of benefit to himself or persons of interest to him (other than the membership of the union), with the employers of the members, and from receiving from them gratuities, compensation or benefits of any kind; (15) require the officers to keep books and records of account, in customary form, which would accurately and in detail account for the union's funds; (16) provide that such books and records shall be open and available to members; (17) require the officers to render full financial reports at least semi-annually; (18) provide that the violation of the several provisions of the Act shall be crimes and prescribe appropriate penalties.

Some of the suggested provisions are debatable. Probably some items of equal importance have been overlooked, such as, the subject of election of officers and the review thereof. The above outline is but an effort to set forth concretely the type of Act which the trade union movement needs for its own health: a bill of rights for the individual worker and a halter for the union "boss."

COPAL MINTZ.

New York City.